

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1200

SPONSOR: Senator Sullivan

SUBJECT: Telecommunication

DATE: March 17, 1999

REVISED: 3/24/99 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Keating</u>	<u>Wood</u>	<u>FR</u>	<u>Favorable/1 amend</u>
2.	_____	_____	<u>RI</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The bill creates a statutory exemption for franchised cable television companies from the taxation of leases, rentals and licenses in real property authorized by s. 212.031, F. S.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 212.031

## II. Present Situation:

Section 212.031(1)(a), F. S., provides that “every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license for the use of any real property.” Numerous types of property are exempt from this provision including “ a public or private street or right-of-way occupied or used by a utility for utility purposes.”

Rule 12A-1.046(4)(b), Florida Administrative Code, provides that “the charge by the owner of utility or transmission poles to others for the privilege of attaching wires and other equipment thereto is exempt from taxation as a service transaction.” Pursuant to this rule the Department of Revenue currently does not collect the tax, authorized by s. 212.031(1)(a), F. S., for lease, rental and license agreements that allow franchised cable television providers to occupy and use rights-of-way and roads.

On March 11, 1993, in *Florida Cable Television Ass’n, et al v. Dep’t of Revenue*, Case No. 93-0239RP, the hearing officer ruled that a cable television company is not a “utility” for the purpose of the exemption found in s. 212.031(1)(a)5., F.S., and that Rule 12A-1.046(4)(b), F.A.C. conflicted with s. 212.031(1)(a)5., F.S. As a result of the findings of the hearing officer, the Department believes that it may lack specific Legislative authority for Rule 12A-1.046(4)(b), F.A.C. Thus, the Department has scheduled a Rule Development Workshop for May 25, 1999, to consider repealing the rule. Repeal of the rule would have the effect of eliminating the current tax exemption for franchised cable television providers.

**III. Effect of Proposed Changes:**

The bill amends s. 212.031(1)(a)5., F.S., extending the sales tax exemption for public or private streets or rights-of-way to franchised cable television companies occupying or using such streets or rights-of-way for “other communications” purposes.

The bill takes effect upon becoming a law.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

Depending on the outcome of the Department of Revenue Workshop on Rule 12A-1.046(4)(b), F.A.C., there could be a positive impact on revenues if the bill does not pass.

If the bill is passed, it could be argued that the fiscal impact is neutral, since under current administration, such transactions are exempt from the sales and use tax.

**B. Private Sector Impact:**

Passage of the bill would ensure the continuation of the exemption for franchised cable companies from the taxation of leases, rentals and license agreements that allow such companies to occupy and use rights-of-way and roads.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

HB 317 is identical to SB 1200.

**VIII. Amendments:**

#1 by Fiscal Resource:

Adds the words “poles, conduits and similar improvements located on streets or rights-of-way” to the current public street exemption which is clarification of existing administration.

Defines “utility” as any person providing services as defined in s. 203.012, is also clarification of existing administration.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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